

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ROBERT LEAVENS,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
UNITED STATES COAST GUARD,

Defendants.

Civil Action No.: 10-11061-GAO

ROBERT LEAVENS,

Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
UNITED STATES COAST GUARD,

Defendants.

Civil Action No.: 10-11602-RWZ

JOINT MOTION TO CONSOLIDATE

The parties jointly move, pursuant to Fed. R. Civ. P. 42(a), to consolidate two identical cases filed by Plaintiff Robert Leavens. In each of the above-captioned cases, Plaintiff seeks review of the Massachusetts Department of Environmental Protection's Final Decision and Final Order of Conditions authorizing a Coast Guard lead remediation project at the light station property on Baker's Island in Salem, Massachusetts.

As grounds for this motion, the parties state:

1. On or about May 7, 2010, Plaintiff Robert Leavens filed a complaint in the Superior

Court Department of the Essex County Trial Court, Commonwealth of Massachusetts, entitled Robert Leavens v. Massachusetts Department of Environmental Protection and United States Coast Guard, Docket No. 10-967 (“First State Court Action”).

2. On June 22, 2010, Defendant, the United States Coast Guard (the “Coast Guard”) removed the First State Court Action to this Court pursuant to 28 U.S.C. §§ 1442 and 1446.

3. On July 1, 2010, the Coast Guard filed an assented-to motion for an extension of time to respond to the complaint, which the Court granted on July 6, 2010.

4. On July 20, 2010, Plaintiff filed a new complaint in the Superior Court Department of the Essex County Trial Court, Commonwealth of Massachusetts, entitled Robert Leavens v. Massachusetts Department of Environmental Protection and United States Coast Guard (“Second State Court Action”).

5. On September 20, 2010, the Coast Guard removed the Second State Court Action to this Court pursuant to 28 U.S.C. §§ 1442 and 1446.

6. Also on September 20, 2010, the Coast Guard filed a motion to dismiss the First State Court Action.

7. The First State Court Action is nearly identical to the Second State Court Action in that it raises the same claims and names the same Defendants, but the Second State Court Action is updated to extend to a Final Decision on Reconsideration and a related Final Order of Conditions issued by the Massachusetts Department of Environmental Protection after the First State Court Action was filed.

8. Because the above-captioned cases involve common questions of facts and law

and are brought against the same Defendants, consolidation of these cases will promote judicial economy, as well as convenience for the Court and all parties.

9. All parties assent to the consolidation of these cases.

WHEREFORE, the parties respectfully request that this Court: (a) consolidate the two above-captioned actions; (b) treat the Coast Guard's motion to dismiss as applying to both actions and allow Plaintiff until October 29, 2010 to respond to the Coast Guard's motion to dismiss.

Respectfully submitted,

MASSACHUSETTS DEPARTMENT
OF ENVIRONMENTAL PROTECTION

By its attorney
MARTA COAKLEY
Attorney General

/s/ Louis M. Dundin [by JAS]

Louis M. Dundin (BBO #660359)
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2433
Louis.dundin@state.ma.us

UNITED STATES COAST GUARD

By its attorney
CARMEN M. ORTIZ
United States Attorney

/s/ Jennifer A. Serafyn

Jennifer A. Serafyn
Assistant United States Attorney
United States Attorney's Office
One Courthouse Way, Suite 9200
Boston, MA 02210
Tel: (617) 748-3188
Fax: (617) 748-3969
Jennifer.Serafyn@usdoj.gov

ROBERT LEAVENS,
By his attorney,

/s/ Jeffrey L. Roelofs [by JAS]

Jeffrey L. Roelofs (BBO# 628645)

LAW OFFICES OF JEFFREY L.

ROELOFS, P.C.

30 Green Street

Newburyport, MA 01950

Tel: (978) 462-7600

Fax: (978)462-7610)

jlr@roelofslaw.com

Dated: October 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Jennifer A. Serafyn

Jennifer A. Serafyn

Assistant United States Attorney

Dated: October 4, 2010